

#6203479

File No.: J4006

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

EARNEST SHIELDS,)
Plaintiff,)

V.)

ILLINOIS DEPARTMENT OF CORRECTIONS,)
GERARDO ACEVEDO, individually and as agent)
of ILLINOIS DEPARTMENT OF CORRECTIONS,)
MARCUS HARDY, individually and as agent of)
ILLINOIS DEPARTMENT OF CORRECTIONS,)
WEXFORD HEALTH SOURCES, INC.,)
ARTHUR FUNK, M.D., individually and as agent of)
ILLINOIS DEPARTMENT OF CORRECTIONS and)
WEXFORD HEALTH SOURCES, INC., RICHARD H)
SHUTE, M.D., individually and as agent of ILLINOIS)
DEPARTMENT OF CORRECTIONS and WEXFORD)
HEALTH SOURCES, INC., ROBERT R.)
MIGLIORINO, D.O., individually and as agent of)
ILLINOIS DEPARTMENT OF CORRECTIONS and)
WEXFORD HEALTH SOURCES, INC., RONALD)
SCHAEFER, M.D., individually and as agent of)
ILLINOIS DEPARTMENT OF CORRECTIONS and)
WEXFORD HEALTH SOURCES, INC., SOUTHERN)
ILLINOIS UNIVERSITY SCHOOL OF MEDICINE)
and DAVID J. OLYSAV, M.D., individually and)
as agent of SOUTHERN ILLINOIS UNIVERSITY)
SCHOOL OF MEDICINE,)
Defendants.)

PLAINTIFF DEMANDS
TRIAL BY JURY

COMPLAINT

COMES NOW the Plaintiff, EARNEST SHIELDS, by and through his attorneys, JAMES A. KARAMANIS, ZANE D. SMITH and ANDRE ORDEANU of ZANE D. SMITH & ASSOCIATES, LTD., and complaining of Defendants, ILLINOIS DEPARTMENT OF CORRECTIONS, GERARDO ACEVEDO, individually and as agent of ILLINOIS DEPARTMENT OF CORRECTIONS, MARCUS HARDY, individually and as agent of ILLINOIS DEPARTMENT OF CORRECTIONS, ARTHUR FUNK, M.D., individually and

as agent of ILLINOIS DEPARTMENT OF CORRECTIONS and WEXFORD HEALTH SOURCES, INC., RICHARD H. SHUTE, M.D., individually and as agent of ILLINOIS DEPARTMENT OF CORRECTIONS and WEXFORD HEALTH SOURCES, INC., ROBERT R. MIGLIORINO, D.O., individually and as agent of ILLINOIS DEPARTMENT OF CORRECTIONS and WEXFORD HEALTH SOURCES, INC., RONALD SCHAEFER, M.D., individually and as agent of ILLINOIS DEPARTMENT OF CORRECTIONS and WEXFORD HEALTH SOURCES, INC., SOUTHERN ILLINOIS UNIVERSITY SCHOOL OF MEDICINE and DAVID J. OLYSAV, M.D., individually and as agent of SOUTHERN ILLINOIS UNIVERSITY SCHOOL OF MEDICINE, states and alleges as follows:

THE PARTIES

1. Plaintiff, EARNEST SHIELDS, is a resident of the State of Illinois;
2. Defendant, ILLINOIS DEPARTMENT OF CORRECTIONS is a municipal agency of the State of Illinois and is situated in the State of Illinois;
3. Defendant, WEXFORD HEALTH SOURCES, INC., is an corporation registered to do business in the State of Illinois which provides healthcare services to inmates housed in Illinois Department of Corrections facilities.
4. Defendant, GERARDO ACEVEDO, upon information and belief, is a resident of the State of Illinois;
5. Defendant, MARCUS HARDY, upon information and belief, is a resident of the State of Illinois;
6. Defendant, ARTHUR FUNK, M.D., upon information and belief, is a resident of the State of Illinois;
7. Defendant, RICHARD H. SHUTE, M.D., upon information and belief, is a resident of the State of Illinois;
8. Defendant, ROBERT R. MIGLIORINO, upon information and belief, is a resident of the State of Illinois;
9. Defendant, RONALD SCHAEFER, M.D., upon information and belief, is a resident of the State of Illinois;

10. Defendant, SOUTHERN ILLINOIS UNIVERSITY SCHOOL OF MEDICINE is a public university of the State of Illinois.

11. Defendant, DAVID J. OLYSAV, M.D., upon information and belief, is a resident of the State of Illinois;

12. Defendants are sued individually and in their official capacities. Relief is sought against each and all Defendants as well as their agents, assistants, successor, employees and persons acting in concert or cooperation with them or at their direction or under their supervision;

13. At all times relevant herein, the Defendants, GERARDO ACEVEDO, MARCUS HARDY, ARTHUR FUNK, M.D., RICHARD H. SHUTE, ROBERT R. MIGLIORINO, D.O., and RONALD SCHAEFER, M.D. and their agents, assistants, and employees acted pursuant to the policies, regulations or decisions officially adopted or promulgated by those in the ILLINOIS DEPARTMENT OF CORRECTIONS and WEXFORD HEALTH SOURCES, INC., whose acts may fairly be said to represent official policy or were pursuant to governmental custom of the STATE OF ILLINOIS;

14. At all times relevant herein, Defendants GERARDO ACEVEDO, MARCUS HARDY, ARTHUR FUNK, M.D., RICHARD H. SHUTE, ROBERT R. MIGLIORINO, D.O., RONALD SCHAEFER, M.D., DAVID J. OLYSAV, M.D. have acted under the color of authority of the laws of the State of Illinois or in active concert with such Defendants who are so acting.

JURISDICTION AND VENUE

15. Plaintiff institutes these proceedings and invokes the jurisdiction of this Court under and by virtue of 28 U.S.C. § 1343 to obtain the costs of suit, including reasonable attorney fees, and damages suffered by Plaintiff and caused by Defendants' violation of his rights as guaranteed in the Eighth Amendment to the Constitution of the United States and by federal law, particularly 42 U.S.C. § 1983;

16. This Court also has jurisdiction of this action under 28 U.S.C. § 1331, in that the matter in controversy arises under the Eighth Amendment of the Constitution of the United States; and

17. The unlawful deprivation of Plaintiff's rights and all other violations alleged herein were committed within the State of Illinois;

ALLEGATIONS COMMON TO ALL COUNTS

18. That at all times relevant hereto, Plaintiff was an inmate be housed at various Illinois Department of Corrections facilities including Hill Correctional Center in Galesburg, Illinois and Statesville Correctional Center in Joliet, Illinois.

19. That on June 16, 2008, Plaintiff injured himself while lifting weights at Hill Correctional Center.

20. That on June 23, 2008 Gregory A. Scherer, M.D. informed Defendant, SHUTE, that Plaintiff had suffered a pectoralis tendon rupture of the left chest and shoulder and that Plaintiff's injury required a shoulder specialist and surgical repair.

21. That on July 31, 2009 George Ozoude, M.D. determined that Plaintiff's injury was too far out for surgical intervention.

COUNT I

Plaintiff reaffirms and realleges the allegations contained in Paragraphs 1 through 21 of Plaintiff's Complaint as though fully set forth herein and further alleges;

22. That subsequent to June 16, 2008, Plaintiff informed Defendants of his complaints regarding the injury he had sustained.

23. That Defendants, and each of them were then and there guilty of the following acts or omissions:

- a. deliberately ignored the seriousness of Plaintiff's injury and specifically the medical diagnosis and proper course of treatment indicated by Gregory A. Scherer, M.D.;
- b. failed to ensure that there was follow up with the prescribed treatment;
- c. failed to provide competent and professional medical treatment;
- d. placed Plaintiff on a medical hold and refused to seek further treatment for Plaintiff's injuries;
- e. failed to provide Plaintiff with a referral to a physician who was capable of

performing the surgical intervention needed for his injury;

- f. denied Plaintiff access to a physician when there was a clear need to see a physician.

24. As a direct and proximate result of the foregoing acts or omissions on the part of Defendants, ILLINOIS DEPARTMENT OF CORRECTIONS, GERARDO ACEVEDO, MARCUS HARDY, WEXFORD HEALTH SOURCES, INC., ARTHUR FUNK, M.D., RICHARD H. SHUTE, ROBERT R. MIGLIORINO, D.O., RONALD SCHAEFER, M.D., SOUTHERN ILLINOIS UNIVERSITY SCHOOL OF MEDICINE and DAVID J. OLYSAV, M.D., Plaintiff, EARNEST SHIELDS was severely and permanently injured, sustained great mental and physical pain and suffering, sustained damage to his nervous system and other systems of the body, was kept from attending to his ordinary affairs and duties and lost great gains which he would otherwise have made and acquired as well as incurring other damages.

WHEREFORE, Plaintiff prays that this Court:

- a. Find and hold that the Plaintiff's Constitutional rights have been violated by Defendants;
- b. Order that Plaintiff be awarded:
 - 1. Damages according to proof for suffering endured by Plaintiff;
 - 4. Punitive damages according to proof;
 - 5. Reasonable costs and attorneys fees associated with this action.
- c. Grant other such relief as may be just and proper.

COUNT II

Plaintiff reaffirms and realleges the allegations contained in Paragraphs 1 through 23 of Plaintiff's Complaint as though fully set forth herein and further alleges;

25. That at all times herein material, Defendant, SOUTHERN ILLINOIS UNIVERSITY SCHOOL OF MEDICINE, owned, operated, managed, and controlled a healthcare center located

in Carbondale, Illinois, wherein it treated persons suffering from various ailments and provided room, laboratories, drugs and medical devices and services for patients during their treatment thereat.

26. That at all times herein material, Defendant, DAVID J. OLYSAV, M.D., was an agent, apparent agent or employee of Defendant, SOUTHERN ILLINOIS UNIVERSITY SCHOOL OF MEDICINE.

27. That during the treatment, said Defendant, SOUTHER ILLINOIS UNIVERSITY SCHOOL OF MEDICINE, by and through its agents and employees, assisted OLYSAV during the treatment of Plaintiff.

28. Defendant, SOUTHERN ILLINOIS UNIVERSITY SCHOOL OF MEDICINE, then and there owed the duty to use, in its care of Plaintiff, that degree of skill customarily required of like-kind institutions but in violation of said duty, Defendant, SOUTHERN ILLINOIS UNIVERSITY SCHOOL OF MEDICINE, by and through its agents, apparent agents and employees, was then and there guilty of one or more of the following wrongful acts or omissions:

- a. Permitted Defendant to treat Plaintiff when it knew, or in the exercise of reasonable care should have known by and through its agents and employees, that said Defendant was neither skilled nor qualified in such treatment;
- b. Failed to establish and maintain standards requiring its staff to check on procedures in the care rendered Plaintiff;
- c. Failed to require consultation with or examination by competent members of its staff;
- d. Failed to provide qualified personnel adequate to supervise its medical patients, in particular, Plaintiff;
- e. Carelessly and negligently failed to have its medical staff review Plaintiff's treatment when it became apparent that the treatment being rendered to by the Defendants was insufficient; and
- f. Otherwise acted in a careless and negligent manner.

29. That as a direct and proximate result or one or more of the foregoing wrongful acts and/or omissions of the Defendant, SOUTHERN ILLINOIS UNIVERSITY SCHOOL OF MEDICINE, by and through its agents, apparent agents and employees, Plaintiff, EARNEST

SHIELDS, was severely and permanently injured, sustained great mental and physical pain and suffering, sustained damage to his nervous system and other systems of the body, was kept from attending to his ordinary affairs and duties and lost great gains which he would otherwise have made and acquired as well as incurring other damages.

WHEREFORE, the Plaintiff, EARNEST SHIELDS, prays this Honorable Court enter judgment in his favor and against the Defendant SOUTHERN ILLINOIS UNIVERSITY SCHOOL OF MEDICINE, in an amount in excess of ONE HUNDRE FIFTY THOUSAND AND NO/100 (\$150,000.00) DOLLARS.

COUNT III

Plaintiff reaffirms and realleges the allegations contained in Paragraphs 1 through 29 of Plaintiff's Complaint as though fully set forth herein and further alleges;

30. That at all times herein material, Defendant, DAVID J. OLYSAV, M.D., was and still is a physician duly licensed to practice his profession in the State of Illinois.

31. That at all times herein material, Defendant, DAVID J. OLYSAV, M.D., practiced his profession in the State of Illinois.

32. That Defendant, DAVID J. OLYSAV, M.D. was a physician at SOUTHERN ILLINOIS UNIVERSITY SCHOOL OF MEDICINE.

33. That DAVID J. OLYSAV, M.D., gave the appearance of being an agent of SOUTHERN ILLINOIS UNIVERSITY SCHOOL OF MEDICINE and Plaintiff relied on that apparent agency to his detriment.

34. That on or about August 2008 Defendant, DAVID J. OLYSAV, M.D., examined Plaintiff at SOUTHERN ILLINOIS UNIVERSITY SCHOOL OF MEDICINE.

35. That after assuming the care and treatment of Plaintiff, Defendant, DAVID J. OLYSAV, M.D. was guilty of one or more of the following negligent and/or wrongful acts and/or omissions:

- a. Carelessly and negligently failed to take due cognizance of the Plaintiff's condition of ill being;
- b. Carelessly and negligently failed to consult with physicians skilled in other specialties of medicine and capable of properly diagnosing and treating Plaintiff's condition;
- c. Carelessly and negligently prescribing physical therapy for Plaintiff.

7. That as a direct and proximate result or one or more of the foregoing wrongful acts and/or omissions of the Defendant, DAVID J. OLYSAV, M.D., Plaintiff, EARNEST SHIELDS, was severely and permanently injured, sustained great mental and physical pain and suffering, sustained damage to his nervous system and other systems of the body, was kept from attending to his ordinary affairs and duties and lost great gains which he would otherwise have made and acquired, as well as incurring other damages.

WHEREFORE, the Plaintiff, EARNEST SHIELDS, prays this Honorable Court enter judgment in his favor and against the Defendant DAVID J. OLYSAV, M.D., in an amount in excess of ONE HUNDRE FIFTY THOUSAND AND NO/100 (\$150,000.00) DOLLARS.

Respectfully submitted,

//s/ James A. Karamanis
JAMES A. KARAMANIS

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